

Union Calendar No. 227

111TH CONGRESS
2^D SESSION

H. R. 3342

[Report No. 111–390]

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2009

Mr. LUJÁN introduced the following bill; which was referred to the Committee on Natural Resources

JANUARY 12, 2010

Additional sponsor: Mr. HEINRICH

JANUARY 12, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 24, 2009]

A BILL

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Aamodt Litigation Settlement Act”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 7 *Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—POJOAQUE BASIN REGIONAL WATER SYSTEM

Sec. 101. Authorization of Regional Water System.

Sec. 102. Operating Agreement.

Sec. 103. Acquisition of Pueblo water supply for the Regional Water System.

Sec. 104. Delivery and allocation of Regional Water System capacity and water.

Sec. 105. Aamodt Settlement Pueblos’ Fund.

Sec. 106. Environmental compliance.

Sec. 107. Authorization of appropriations.

TITLE II—POJOAQUE BASIN INDIAN WATER RIGHTS SETTLEMENT

Sec. 201. Settlement Agreement and contract approval.

Sec. 202. Environmental compliance.

Sec. 203. Conditions precedent and enforcement date.

Sec. 204. Waivers and releases.

Sec. 205. Effect.

8 **SEC. 2. DEFINITIONS.**

9 *In this Act:*

10 (1) *AAMODT CASE.*—*The term “Aamodt Case”*
 11 *means the civil action entitled State of New Mexico,*
 12 *ex rel. State Engineer and United States of America,*
 13 *Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San*
 14 *Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt,*
 15 *et al., No. 66 CV 6639 MV/LCS (D.N.M.).*

1 (2) *ACRE-FEET.*—*The term “acre-feet” means*
2 *acre-feet of water per year.*

3 (3) *AUTHORITY.*—*The term “Authority” means*
4 *the Pojoaque Basin Regional Water Authority de-*
5 *scribed in section 9.5 of the Settlement Agreement or*
6 *an alternate entity acceptable to the Pueblos and the*
7 *County to operate and maintain the diversion and*
8 *treatment facilities, certain transmission pipelines,*
9 *and other facilities of the Regional Water System.*

10 (4) *CITY.*—*The term “City” means the city of*
11 *Santa Fe, New Mexico.*

12 (5) *COST-SHARING AND SYSTEM INTEGRATION*
13 *AGREEMENT.*—*The term “Cost-Sharing and System*
14 *Integration Agreement” means the agreement to be ex-*
15 *ecuted by the United States, the State, the Pueblos,*
16 *the County, and the City that—*

17 (A) *describes the location, capacity, and*
18 *management (including the distribution of water*
19 *to customers) of the Regional Water System; and*

20 (B) *allocates the costs of the Regional Water*
21 *System with respect to—*

22 (i) *the construction, operation, mainte-*
23 *nance, and repair of the Regional Water*
24 *System;*

1 (ii) *rights-of-way for the Regional*
2 *Water System; and*

3 (iii) *the acquisition of water rights.*

4 (6) *COUNTY.*—*The term “County” means Santa*
5 *Fe County, New Mexico.*

6 (7) *COUNTY DISTRIBUTION SYSTEM.*—*The term*
7 *“County Distribution System” means the portion of*
8 *the Regional Water System that serves water cus-*
9 *tomers on non-Pueblo land in the Pojoaque Basin.*

10 (8) *COUNTY WATER UTILITY.*—*The term “County*
11 *Water Utility” means the water utility organized by*
12 *the County to—*

13 (A) *receive water distributed by the Author-*
14 *ity; and*

15 (B) *provide the water received under sub-*
16 *paragraph (A) to customers on non-Pueblo land*
17 *in the Pojoaque Basin.*

18 (9) *ENGINEERING REPORT.*—*The term “Engi-*
19 *neering Report” means the report entitled “Pojoaque*
20 *Regional Water System Engineering Report” dated*
21 *September 2008 and any amendments thereto, includ-*
22 *ing any modifications which may be required by sec-*
23 *tion 101(d)(2).*

1 (10) *FUND.*—*The term “Fund” means the*
 2 *Aamodt Settlement Pueblos’ Fund established by sec-*
 3 *tion 105(a).*

4 (11) *OPERATING AGREEMENT.*—*The term “Oper-*
 5 *ating Agreement” means the agreement between the*
 6 *Pueblos and the County executed under section*
 7 *102(a).*

8 (12) *OPERATIONS, MAINTENANCE, AND REPLACE-*
 9 *MENT COSTS.*—

10 (A) *IN GENERAL.*—*The term “operations,*
 11 *maintenance, and replacement costs” means all*
 12 *costs for the operation of the Regional Water*
 13 *System that are necessary for the safe, efficient,*
 14 *and continued functioning of the Regional Water*
 15 *System to produce the benefits described in the*
 16 *Settlement Agreement.*

17 (B) *EXCLUSION.*—*The term “operations,*
 18 *maintenance, and replacement costs” does not*
 19 *include construction costs or costs related to con-*
 20 *struction design and planning.*

21 (13) *POJOAQUE BASIN.*—

22 (A) *IN GENERAL.*—*The term “Pojoaque*
 23 *Basin” means the geographic area limited by a*
 24 *surface water divide (which can be drawn on a*
 25 *topographic map), within which area rainfall*

and runoff flow into arroyos, drainages, and
named tributaries that eventually drain to—

(i) the Rio Pojoaque; or

(ii) the 2 unnamed arroyos immediately south; and

(iii) 2 arroyos (including the Arroyo Alamo) that are north of the confluence of the Rio Pojoaque and the Rio Grande.

(B) INCLUSION.—The term “Pojoaque Basin” includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87–231 (75 Stat. 505).

(14) PUEBLO.—The term “Pueblo” means each of the pueblos of Nambe, Pojoaque, San Ildefonso, or Tesuque.

(15) PUEBLOS.—The term “Pueblos” means collectively the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

(16) PUEBLO LAND.—The term “Pueblo land” means any real property that is—

(A) held by the United States in trust for a Pueblo within the Pojoaque Basin;

(B)(i) owned by a Pueblo within the Pojoaque Basin before the date on which a court approves the Settlement Agreement; or

1 (ii) acquired by a Pueblo on or after the
2 date on which a court approves the Settlement
3 Agreement, if the real property is located—

4 (I) within the exterior boundaries of
5 the Pueblo, as recognized and conformed by
6 a patent issued under the Act of December
7 22, 1858 (11 Stat. 374, chapter V); or

8 (II) within the exterior boundaries of
9 any territory set aside for the Pueblo by
10 law, executive order, or court decree;

11 (C) owned by a Pueblo or held by the
12 United States in trust for the benefit of a Pueblo
13 outside the Pojoaque Basin that is located within
14 the exterior boundaries of the Pueblo as recog-
15 nized and confirmed by a patent issued under
16 the Act of December 22, 1858 (11 Stat. 374,
17 chapter V); or

18 (D) within the exterior boundaries of any
19 real property located outside the Pojoaque Basin
20 set aside for a Pueblo by law, executive order, or
21 court decree, if the land is within or contiguous
22 to land held by the United States in trust for the
23 Pueblo as of January 1, 2005.

24 (17) PUEBLO WATER FACILITY.—

1 (A) *IN GENERAL.*—The term “Pueblo Water
2 *Facility*” means—

3 (i) a portion of the *Regional Water*
4 *System* that serves only water customers on
5 *Pueblo land*; and

6 (ii) portions of a *Pueblo water system*
7 *in existence on the date of enactment of this*
8 *Act* that serve water customers on non-
9 *Pueblo land*, also in existence on the date of
10 *enactment of this Act*, or their successors,
11 *that are—*

12 (I) *depicted in the final project*
13 *design, as modified by the drawings re-*
14 *flecting the completed Regional Water*
15 *System*; and

16 (II) *described in the Operating*
17 *Agreement.*

18 (B) *INCLUSIONS.*—The term “Pueblo Water
19 *Facility*” includes—

20 (i) the barrier dam and infiltration
21 project on the *Rio Pojoaque* described in the
22 *Engineering Report*; and

23 (ii) the *Tesuque Pueblo* infiltration
24 pond described in the *Engineering Report*.

25 (18) *REGIONAL WATER SYSTEM.*—

1 (A) *IN GENERAL.*—*The term “Regional*
 2 *Water System” means the Regional Water Sys-*
 3 *tem described in section 101(a).*

4 (B) *EXCLUSIONS.*—*The term “Regional*
 5 *Water System” does not include the County or*
 6 *Pueblo water supply delivered through the Re-*
 7 *gional Water System.*

8 (19) *SAN JUAN-CHAMA PROJECT.*—*The term*
 9 *“San Juan-Chama Project” means the Project au-*
 10 *thorized by section 8 of the Act of June 13, 1962 (76*
 11 *Stat. 96, 97), and the Act of April 11, 1956 (70 Stat.*
 12 *105).*

13 (20) *SAN JUAN-CHAMA PROJECT ACT.*—*The term*
 14 *“San Juan-Chama Project Act” means sections 8*
 15 *through 18 of the Act of June 13, 1962 (76 Stat. 96,*
 16 *97).*

17 (21) *SECRETARY.*—*The term “Secretary” means*
 18 *the Secretary of the Interior.*

19 (22) *SETTLEMENT AGREEMENT.*—*The term “Set-*
 20 *tlement Agreement” means the stipulated and binding*
 21 *agreement among the State, the Pueblos, the United*
 22 *States, the County, and the City dated January 19,*
 23 *2006, and signed by all of the government parties to*
 24 *the Settlement Agreement (other than the United*

1 *States) on May 3, 2006, and as amended in con-*
 2 *formity with this Act.*

3 (23) *STATE.*—*The term “State” means the State*
 4 *of New Mexico.*

5 ***TITLE I—POJOAQUE BASIN***
 6 ***REGIONAL WATER SYSTEM***

7 ***SEC. 101. AUTHORIZATION OF REGIONAL WATER SYSTEM.***

8 (a) *IN GENERAL.*—*The Secretary, acting through the*
 9 *Commissioner of Reclamation, shall plan, design, and con-*
 10 *struct a regional water system in accordance with the Set-*
 11 *tlement Agreement, to be known as the “Regional Water*
 12 *System”—*

13 (1) *to divert and distribute water to the Pueblos*
 14 *and to the County Water Utility, in accordance with*
 15 *the Engineering Report; and*

16 (2) *that consists of—*

17 (A) *surface water diversion facilities at San*
 18 *Ildefonso Pueblo on the Rio Grande; and*

19 (B) *any treatment, transmission, storage*
 20 *and distribution facilities and wellfields for the*
 21 *County Distribution System and Pueblo Water*
 22 *Facilities that are necessary to supply 4,000*
 23 *acre-feet of water within the Pojoaque Basin, un-*
 24 *less modified in accordance with subsection*
 25 *(d)(2).*

1 (b) *FINAL PROJECT DESIGN.*—*The Secretary shall*
 2 *issue a final project design within 90 days of completion*
 3 *of the environmental compliance described in section 106*
 4 *for the Regional Water System that—*

5 (1) *is consistent with the Engineering Report;*
 6 *and*

7 (2) *includes a description of any Pueblo Water*
 8 *Facilities.*

9 (c) *ACQUISITION OF LAND; WATER RIGHTS.*—

10 (1) *ACQUISITION OF LAND.*—*Upon request, and*
 11 *in exchange for the funding which shall be provided*
 12 *in section 107(c), the Pueblos shall consent to the*
 13 *grant of such easements and rights-of-way as may be*
 14 *necessary for the construction of the Regional Water*
 15 *System at no cost to the Secretary. To the extent that*
 16 *the State or County own easements or rights-of-way*
 17 *that may be used for construction of the Regional*
 18 *Water System, the State or County shall provide that*
 19 *land or interest in land as necessary for construction*
 20 *at no cost to the Secretary. The Secretary shall ac-*
 21 *quire any other land or interest in land that is nec-*
 22 *essary for the construction of the Regional Water Sys-*
 23 *tem.*

1 (2) *WATER RIGHTS.*—*The Secretary shall not*
 2 *condemn water rights for purposes of the Regional*
 3 *Water System.*

4 (d) *CONDITIONS FOR CONSTRUCTION.*—

5 (1) *IN GENERAL.*—*The Secretary shall not begin*
 6 *construction of the Regional Water System facilities*
 7 *until the date on which—*

8 (A) *the Secretary executes—*

9 (i) *the Settlement Agreement; and*

10 (ii) *the Cost-Sharing and System Inte-*
 11 *gration Agreement; and*

12 (B) *the State and the County have entered*
 13 *into an agreement with the Secretary to con-*
 14 *tribute the non-Federal share of the costs of the*
 15 *construction in accordance with the Cost-Shar-*
 16 *ing and System Integration Agreement.*

17 (2) *MODIFICATIONS TO REGIONAL WATER SYS-*
 18 *TEM.*—

19 (A) *IN GENERAL.*—*The State and the Coun-*
 20 *ty, in agreement with the Pueblos, the City, and*
 21 *other signatories to the Cost-Sharing and System*
 22 *Integration Agreement, may modify the extent,*
 23 *size, and capacity of the County Distribution*
 24 *System as set forth in the Cost-Sharing and Sys-*
 25 *tem Integration Agreement.*

1 (B) *EFFECT.*—*A modification under sub-*
 2 *paragraph (A)—*

3 *(i) shall not affect implementation of*
 4 *the Settlement Agreement so long as the*
 5 *provisions in section 203 are satisfied; and*

6 *(ii) may result in an adjustment of the*
 7 *State and County cost-share allocation as*
 8 *set forth in the Cost-Sharing and System*
 9 *Integration Agreement.*

10 (e) *APPLICABLE LAW.*—*The Indian Self-Determina-*
 11 *tion and Education Assistance Act (25 U.S.C. 450 et seq.)*
 12 *shall not apply to the design and construction of the Re-*
 13 *gional Water System.*

14 (f) *CONSTRUCTION COSTS.*—

15 (1) *PUEBLO WATER FACILITIES.*—

16 (A) *IN GENERAL.*—*Except as provided in*
 17 *subparagraph (B), the expenditures of the Sec-*
 18 *retary to construct the Pueblo Water Facilities*
 19 *under this section shall not exceed \$106,400,000.*

20 (B) *EXCEPTION.*—*The amount described in*
 21 *subparagraph (A) shall be increased or de-*
 22 *creased, as appropriate, based on ordinary fluc-*
 23 *tuations in construction costs since October 1,*
 24 *2006, as determined using applicable engineer-*
 25 *ing cost indices.*

1 (2) *COSTS TO PUEBLO.*—*The costs incurred by*
 2 *the Secretary in carrying out activities to construct*
 3 *the Pueblo Water Facilities under this section shall*
 4 *not be reimbursable to the United States.*

5 (3) *COUNTY DISTRIBUTION SYSTEM.*—*The costs*
 6 *of constructing the County Distribution System shall*
 7 *be at State and local expense.*

8 (g) *STATE AND LOCAL CAPITAL OBLIGATIONS.*—*The*
 9 *State and local capital obligations for the Regional Water*
 10 *System described in the Cost-Sharing and System Integra-*
 11 *tion Agreement shall be satisfied on the payment of the*
 12 *State and local capital obligations described in the Cost-*
 13 *Sharing and System Integration Agreement.*

14 (h) *CONVEYANCE OF REGIONAL WATER SYSTEM FA-*
 15 *CILITIES.*—

16 (1) *IN GENERAL.*—*Subject to paragraph (2), on*
 17 *completion of the construction of the Regional Water*
 18 *System, the Secretary, in accordance with the Oper-*
 19 *ating Agreement, shall convey to—*

20 (A) *each Pueblo the portion of any Pueblo*
 21 *Water Facility that is located within the bound-*
 22 *aries of the Pueblo, including any land or inter-*
 23 *est in land located within the boundaries of the*
 24 *Pueblo that is acquired by the United States for*
 25 *the construction of the Pueblo Water Facility;*

1 (B) *the County the County Distribution*
 2 *System, including any land or interest in land*
 3 *acquired by the United States for the construc-*
 4 *tion of the County Distribution System; and*

5 (C) *the Authority any portions of the Re-*
 6 *gional Water System that remain after making*
 7 *the conveyances under subparagraphs (A) and*
 8 *(B), including any land or interest in land ac-*
 9 *quired by the United States for the construction*
 10 *of the portions of the Regional Water System.*

11 (2) *CONDITIONS FOR CONVEYANCE.—The Sec-*
 12 *retary shall not convey any portion of the Regional*
 13 *Water System facilities under paragraph (1) until the*
 14 *date on which—*

15 (A) *construction of the Regional Water Sys-*
 16 *tem is complete; and*

17 (B) *the Operating Agreement is executed in*
 18 *accordance with section 102.*

19 (3) *SUBSEQUENT CONVEYANCE.—On conveyance*
 20 *by the Secretary under paragraph (1), the Pueblos,*
 21 *the County, and the Authority shall not reconvey any*
 22 *portion of the Regional Water System conveyed to the*
 23 *Pueblos, the County, and the Authority, respectively,*
 24 *unless the reconveyance is authorized by an Act of*

1 Congress enacted after the date of enactment of this
2 Act.

3 (4) *INTEREST OF THE UNITED STATES.*—On conveyance of a portion of the Regional Water System
4 under paragraph (1), the United States shall have no
5 further right, title, or interest in and to the portion
6 of the Regional Water System conveyed.
7

8 (5) *ADDITIONAL CONSTRUCTION.*—On conveyance of a portion of the Regional Water System under
9 paragraph (1), the Pueblos, County, or the Authority,
10 as applicable, may, at the expense of the Pueblos,
11 County, or the Authority, construct any additional
12 infrastructure that is necessary to fully use the water
13 delivered by the Regional Water System.
14

15 (6) *LIABILITY.*—

16 (A) *IN GENERAL.*—Effective on the date of
17 conveyance of any land or facility under this
18 section, the United States shall not be held liable
19 by any court for damages of any kind arising
20 out of any act, omission, or occurrence relating
21 to the land and facilities conveyed, other than
22 damages caused by acts of negligence by the
23 United States, or by employees or agents of the
24 United States, prior to the date of conveyance.

1 (B) *TORT CLAIMS.*—*Nothing in this section*
 2 *increases the liability of the United States be-*
 3 *yond the liability provided in chapter 171 of*
 4 *title 28, United States Code (commonly known*
 5 *as the “Federal Tort Claims Act”).*

6 (7) *EFFECT.*—*Nothing in any transfer of owner-*
 7 *ship provided or any conveyance thereto as provided*
 8 *in this section shall extinguish the right of any Pueb-*
 9 *lo, the County, or the Regional Water Authority to the*
 10 *continuous use and benefit of each easement or right*
 11 *of way for the use, operation, maintenance, repair,*
 12 *and replacement of Pueblo Water Facilities, the Coun-*
 13 *ty Distribution System or the Regional Water System*
 14 *or for wastewater purposes as provided in the Cost-*
 15 *Sharing and System Integration Agreement.*

16 **SEC. 102. OPERATING AGREEMENT.**

17 (a) *IN GENERAL.*—*The Pueblos and the County shall*
 18 *submit to the Secretary an executed Operating Agreement*
 19 *for the Regional Water System that is consistent with this*
 20 *Act, the Settlement Agreement, and the Cost-Sharing and*
 21 *System Integration Agreement not later than 180 days after*
 22 *the later of—*

23 (1) *the date of completion of environmental com-*
 24 *pliance and permitting; or*

1 (2) *the date of issuance of a final project design*
 2 *for the Regional Water System under section 101(b).*

3 (b) *APPROVAL.*—*Not later than 180 days after receipt*
 4 *of the operating agreement described in subsection (a), the*
 5 *Secretary shall approve the Operating Agreement upon de-*
 6 *termination that the Operating Agreement is consistent*
 7 *with this Act, the Settlement Agreement, and the Cost-Shar-*
 8 *ing and System Integration Agreement.*

9 (c) *CONTENTS.*—*The Operating Agreement shall in-*
 10 *clude—*

11 (1) *provisions consistent with the Settlement*
 12 *Agreement and the Cost-Sharing and System Integra-*
 13 *tion Agreement and necessary to implement the in-*
 14 *tended benefits of the Regional Water System de-*
 15 *scribed in those documents;*

16 (2) *provisions for—*

17 (A) *the distribution of water conveyed*
 18 *through the Regional Water System, including a*
 19 *delineation of—*

20 (i) *distribution lines for the County*
 21 *Distribution System;*

22 (ii) *distribution lines for the Pueblo*
 23 *Water Facilities; and*

24 (iii) *distribution lines that serve*
 25 *both—*

1 (I) the County Distribution Sys-
2 tem; and

3 (II) the Pueblo Water Facilities;
4 (B) the allocation of the Regional Water
5 System capacity;

6 (C) the terms of use of unused water capac-
7 ity in the Regional Water System;

8 (D) the construction of additional infra-
9 structure and the acquisition of associated
10 rights-of-way or easements necessary to enable
11 any of the Pueblos or the County to fully use
12 water allocated to the Pueblos or the County
13 from the Regional Water System, including pro-
14 visions addressing when the construction of such
15 additional infrastructure requires approval by
16 the Authority;

17 (E) the allocation and payment of annual
18 operation, maintenance, and replacement costs
19 for the Regional Water System, including the
20 portions of the Regional Water System that are
21 used to treat, transmit, and distribute water to
22 both the Pueblo Water Facilities and the County
23 Water Utility;

24 (F) the operation of wellfields located on
25 Pueblo land;

1 (G) the transfer of any water rights nec-
2 essary to provide the Pueblo water supply de-
3 scribed in section 103(a);

4 (H) the operation of the Regional Water
5 System with respect to the water supply, includ-
6 ing the allocation of the water supply in accord-
7 ance with section 3.1.8.4.2 of the Settlement
8 Agreement so that, in the event of a shortage of
9 supply to the Regional Water System, the supply
10 to each of the Pueblos' and to the County's dis-
11 tribution system shall be reduced on a prorata
12 basis, in proportion to each distribution system's
13 most current annual use; and

14 (I) dispute resolution; and

15 (3) provisions for operating and maintaining the
16 Regional Water System facilities before and after con-
17 veyance under section 101(h), including provisions
18 to—

19 (A) ensure that—

20 (i) the operation of, and the diversion
21 and conveyance of water by, the Regional
22 Water System is in accordance with the
23 Settlement Agreement;

24 (ii) the wells in the Regional Water
25 System are used in conjunction with the

1 *surface water supply of the Regional Water*
 2 *System to ensure a reliable firm supply of*
 3 *water to all users of the Regional Water*
 4 *System, consistent with the intent of the*
 5 *Settlement Agreement that surface supplies*
 6 *will be used to the maximum extent feasible;*

7 *(iii) the respective obligations regard-*
 8 *ing delivery, payment, operation, and man-*
 9 *agement are enforceable; and*

10 *(iv) the County has the right to serve*
 11 *any new water users located on non-Pueblo*
 12 *land in the Pojoaque Basin; and*

13 *(B) allow for any aquifer storage and recov-*
 14 *ery projects that are approved by the Office of*
 15 *the New Mexico State Engineer.*

16 *(d) EFFECT.—Nothing in this Act precludes the Oper-*
 17 *ating Agreement from authorizing phased or interim oper-*
 18 *ations if the Regional Water System is constructed in*
 19 *phases.*

20 **SEC. 103. ACQUISITION OF PUEBLO WATER SUPPLY FOR**
 21 **THE REGIONAL WATER SYSTEM.**

22 *(a) IN GENERAL.—For the purpose of providing a reli-*
 23 *able firm supply of water from the Regional Water System*
 24 *for the Pueblos in accordance with the Settlement Agree-*
 25 *ment, the Secretary, on behalf of the Pueblos, shall—*

1 (1) *acquire water rights to—*

2 (A) *302 acre-feet of Nambe reserved water*
3 *described in section 2.6.2 of the Settlement*
4 *Agreement pursuant to section 107(c)(1)(C); and*

5 (B) *1141 acre-feet from water acquired by*
6 *the County for water rights commonly referred to*
7 *as “Top of the World” rights in the Aamodt*
8 *Case;*

9 (2) *enter into a contract with the Pueblos for*
10 *1,079 acre-feet in accordance with section 11 of the*
11 *San Juan-Chama Project Act; and*

12 (3) *by application to the State Engineer, seek*
13 *approval to divert the water acquired and made*
14 *available under paragraphs (1) and (2) at the points*
15 *of diversion for the Regional Water System, consistent*
16 *with the Settlement Agreement and the Cost-Sharing*
17 *and System Integration Agreement.*

18 (b) *FORFEITURE.—The nonuse of the water supply se-*
19 *cured by the Secretary for the Pueblos under subsection (a)*
20 *shall in no event result in forfeiture, abandonment, relin-*
21 *quishment, or other loss thereof.*

22 (c) *TRUST.—The Pueblo water supply secured under*
23 *subsection (a) shall be held by the United States in trust*
24 *for the Pueblos.*

1 (d) *APPLICABLE LAW.*—*The water supply made avail-*
 2 *able pursuant to subsection (a)(2) shall be subject to the*
 3 *San Juan-Chama Project Act, and no preference shall be*
 4 *provided to the Pueblos as a result of subsection (c) with*
 5 *regard to the delivery or distribution of San Juan-Chama*
 6 *Project water or the management or operation of the San*
 7 *Juan-Chama Project.*

8 (e) *CONTRACT FOR SAN JUAN-CHAMA PROJECT*
 9 *WATER SUPPLY.*—*With respect to the contract for the water*
 10 *supply required by subsection (a)(2), such San Juan-*
 11 *Chama Project contract shall be pursuant to the following*
 12 *terms:*

13 (1) *WAIVERS.*—*Notwithstanding the provisions*
 14 *of the San Juan-Chama Project Act, or any other*
 15 *provision of law—*

16 (A) *the Secretary shall waive the entirety of*
 17 *the Pueblos' share of the construction costs for*
 18 *the San Juan-Chama Project, and pursuant to*
 19 *that waiver, the Pueblos' share of all construc-*
 20 *tion costs for the San Juan-Chama Project, in-*
 21 *clusive of both principal and interest, due from*
 22 *1972 to the execution of the contract required by*
 23 *subsection (a)(2), shall be nonreimbursable;*

24 (B) *the Secretary's waiver of each Pueblo's*
 25 *share of the construction costs for the San Juan-*

1 *Chama Project will not result in an increase in*
2 *the pro rata shares of other San Juan-Chama*
3 *Project water contractors, but such costs shall be*
4 *absorbed by the United States Treasury or other-*
5 *wise appropriated to the Department of the Inte-*
6 *rior; and*

7 *(C) the costs associated with any water*
8 *made available from the San Juan-Chama*
9 *Project which were determined nonreimbursable*
10 *and nonreturnable pursuant to Public Law No.*
11 *88–293, 78 Stat. 171 (March 26, 1964), shall re-*
12 *main nonreimbursable and nonreturnable.*

13 *(2) TERMINATION.—The contract shall provide*
14 *that it shall terminate only upon the following condi-*
15 *tions—*

16 *(A) failure of the United States District*
17 *Court for the District of New Mexico to enter a*
18 *final decree for the Aamodt Case by December*
19 *15, 2012, or within the time period of any exten-*
20 *sion of that deadline granted by the court; or*

21 *(B) entry of an order by the United States*
22 *District Court for the District of New Mexico*
23 *voiding the final decree and Settlement Agree-*
24 *ment for the Aamodt Case pursuant to section*
25 *10.3 of the Settlement Agreement.*

1 (f) *LIMITATION.*—*The Secretary shall use the water*
 2 *supply secured under subsection (a) only for the purposes*
 3 *described in the Settlement Agreement.*

4 (g) *FULFILLMENT OF WATER SUPPLY ACQUISITION*
 5 *OBLIGATIONS.*—*Compliance with subsections (a) through*
 6 *(f) shall satisfy any and all obligations of the Secretary*
 7 *to acquire or secure a water supply for the Pueblos pursu-*
 8 *ant to the Settlement Agreement.*

9 (h) *RIGHTS OF PUEBLOS IN SETTLEMENT AGREE-*
 10 *MENT UNAFFECTED.*—*Notwithstanding the provisions of*
 11 *subsections (a) through (g), the Pueblos, the County or the*
 12 *Regional Water Authority may acquire any additional*
 13 *water rights to ensure all parties to the Settlement Agree-*
 14 *ment receive the full allocation of water provided by the*
 15 *Settlement Agreement and nothing in this Act amends or*
 16 *modifies the quantities of water allocated to the Pueblos*
 17 *thereunder.*

18 **SEC. 104. DELIVERY AND ALLOCATION OF REGIONAL**
 19 **WATER SYSTEM CAPACITY AND WATER.**

20 (a) *ALLOCATION OF REGIONAL WATER SYSTEM CA-*
 21 *PACITY.*—

22 (1) *IN GENERAL.*—*The Regional Water System*
 23 *shall have the capacity to divert from the Rio Grande*
 24 *a quantity of water sufficient to provide—*

1 (A) up to 4,000 acre-feet of consumptive use
 2 of water; and

3 (B) the requisite peaking capacity described
 4 in—

5 (i) the Engineering Report; and

6 (ii) the final project design.

7 (2) ALLOCATION TO THE PUEBLOS AND COUNTY
 8 WATER UTILITY.—Of the capacity described in para-
 9 graph (1)—

10 (A) there shall be allocated to the Pueblos—

11 (i) sufficient capacity for the convey-
 12 ance of 2,500 acre-feet consumptive use; and

13 (ii) the requisite peaking capacity for
 14 the quantity of water described in clause
 15 (i); and

16 (B) there shall be allocated to the County
 17 Water Utility—

18 (i) sufficient capacity for the convey-
 19 ance of up to 1,500 acre-feet consumptive
 20 use; and

21 (ii) the requisite peaking capacity for
 22 the quantity of water described in clause
 23 (i).

1 (3) *APPLICABLE LAW*.—Water shall be allocated
 2 to the Pueblos and the County Water Utility under
 3 this subsection in accordance with—

4 (A) *this title*;

5 (B) *the Settlement Agreement*; and

6 (C) *the Operating Agreement*.

7 (b) *DELIVERY OF REGIONAL WATER SYSTEM*
 8 *WATER*.—The Authority shall deliver water from the Re-
 9 gional Water System—

10 (1) *to the Pueblos water in a quantity sufficient*
 11 *to allow full consumptive use of up to 2,500 acre-feet*
 12 *per year of water rights by the Pueblos in accordance*
 13 *with—*

14 (A) *the Settlement Agreement*;

15 (B) *the Operating Agreement*; and

16 (C) *this title*; and

17 (2) *to the County water in a quantity sufficient*
 18 *to allow full consumptive use of up to 1,500 acre-feet*
 19 *per year of water rights by the County Water Utility*
 20 *in accordance with—*

21 (A) *the Settlement Agreement*;

22 (B) *the Operating Agreement*; and

23 (C) *this title*.

1 (c) *ADDITIONAL USE OF ALLOCATION QUANTITY AND*
2 *UNUSED CAPACITY.*—*The Regional Water System may be*
3 *used to—*

4 (1) *provide for use of return flow credits to allow*
5 *for full consumptive use of the water allocated in the*
6 *Settlement Agreement to each of the Pueblos and to*
7 *the County; and*

8 (2) *convey water allocated to one of the Pueblos*
9 *or the County Water Utility for the benefit of another*
10 *Pueblo or the County Water Utility or allow use of*
11 *unused capacity by each other through the Regional*
12 *Water System in accordance with an intergovern-*
13 *mental agreement between the Pueblos, or between a*
14 *Pueblo and County Water Utility, as applicable, if—*

15 (A) *such intergovernmental agreements are*
16 *consistent with the Operating Agreement, the*
17 *Settlement Agreement, and this Act;*

18 (B) *capacity is available without reducing*
19 *water delivery to any Pueblo or the County*
20 *Water Utility in accordance with the Settlement*
21 *Agreement, unless the County Water Utility or*
22 *Pueblo contracts for a reduction in water deliv-*
23 *ery or Regional Water System capacity;*

24 (C) *the Pueblo or County Water Utility*
25 *contracting for use of the unused capacity or*

1 *water has the right to use the water under appli-*
 2 *cable law; and*

3 *(D) any agreement for the use of unused ca-*
 4 *capacity or water provides for payment of the op-*
 5 *eration, maintenance, and replacement costs as-*
 6 *sociated with the use of capacity or water.*

7 ***SEC. 105. AAMODT SETTLEMENT PUEBLOS' FUND.***

8 *(a) ESTABLISHMENT OF THE AAMODT SETTLEMENT*
 9 *PUEBLOS' FUND.—There is established in the Treasury of*
 10 *the United States a fund, to be known as the “Aamodt Set-*
 11 *tlement Pueblos' Fund,” consisting of—*

12 *(1) such amounts as are made available to the*
 13 *Fund under section 107(c) or other authorized*
 14 *sources; and*

15 *(2) any interest earned from investment of*
 16 *amounts in the Fund under subsection (b).*

17 *(b) MANAGEMENT OF THE FUND.—The Secretary shall*
 18 *manage the Fund, invest amounts in the Fund, and make*
 19 *amounts available from the Fund for distribution to the*
 20 *Pueblos in accordance with—*

21 *(1) the American Indian Trust Fund Manage-*
 22 *ment Reform Act of 1994 (25 U.S.C. 4001 et seq.);*
 23 *and*

24 *(2) this Act.*

1 (c) *INVESTMENT OF THE FUND.*—On the date set forth
 2 in section 203(a)(1), the Secretary shall invest amounts in
 3 the Fund in accordance with—

4 (1) *the Act of April 1, 1880 (25 U.S.C. 161);*

5 (2) *the first section of the Act of June 24, 1938*
 6 *(25 U.S.C. 162a); and*

7 (3) *the American Indian Trust Fund Manage-*
 8 *ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).*

9 (d) *TRIBAL MANAGEMENT PLAN.*—

10 (1) *IN GENERAL.*—A Pueblo may withdraw all
 11 or part of the Pueblo’s portion of the Fund on ap-
 12 proval by the Secretary of a tribal management plan
 13 as described in the American Indian Trust Fund
 14 Management Reform Act of 1994 (25 U.S.C. 4001 et
 15 seq.).

16 (2) *REQUIREMENTS.*—In addition to the require-
 17 ments under the American Indian Trust Fund Man-
 18 agement Reform Act of 1994 (25 U.S.C. 4001 et seq.),
 19 the tribal management plan shall require that a
 20 Pueblo spend any amounts withdrawn from the Fund
 21 in accordance with the purposes described in section
 22 107(c).

23 (3) *ENFORCEMENT.*—The Secretary may take ju-
 24 dicial or administrative action to enforce the provi-
 25 sions of any tribal management plan to ensure that

1 *any amounts withdrawn from the Fund under an ap-*
 2 *proved tribal management plan are used in accord-*
 3 *ance with this title.*

4 (4) *LIABILITY.*—*If a Pueblo or the Pueblos exer-*
 5 *cise the right to withdraw amounts from the Fund,*
 6 *neither the Secretary nor the Secretary of the Treas-*
 7 *ury shall retain any liability for the expenditure or*
 8 *investment of the amounts withdrawn.*

9 (5) *EXPENDITURE PLAN.*—

10 (A) *IN GENERAL.*—*The Pueblos shall submit*
 11 *to the Secretary for approval an expenditure*
 12 *plan for any portion of the amounts in the Fund*
 13 *that the Pueblos do not withdraw under this sub-*
 14 *section.*

15 (B) *DESCRIPTION.*—*The expenditure plan*
 16 *shall describe the manner in which, and the pur-*
 17 *poses for which, amounts remaining in the Fund*
 18 *will be used.*

19 (C) *APPROVAL.*—*On receipt of an expendi-*
 20 *ture plan under subparagraph (A), the Secretary*
 21 *shall approve the plan if the Secretary deter-*
 22 *mines that the plan is reasonable and consistent*
 23 *with this Act, the Settlement Agreement, and the*
 24 *Cost-Sharing and System Integration Agree-*
 25 *ment.*

1 (D) *ANNUAL REPORT.*—*The Pueblos shall*
 2 *submit to the Secretary an annual report that*
 3 *describes all expenditures from the Fund during*
 4 *the year covered by the report.*

5 (6) *NO PER CAPITA PAYMENTS.*—*No part of the*
 6 *principal of the Fund, or the interest or income ac-*
 7 *cruing on the principal shall be distributed to any*
 8 *member of a Pueblo on a per capita basis.*

9 (7) *AVAILABILITY OF AMOUNTS FROM THE*
 10 *FUND.*—

11 (A) *APPROVAL OF SETTLEMENT AGREE-*
 12 *MENT.*—*Amounts made available under subpara-*
 13 *graphs (A) and (C) of section 107(c)(1) or from*
 14 *other authorized sources shall be available for ex-*
 15 *penditure or withdrawal only after the date on*
 16 *which the United States District Court for the*
 17 *District of New Mexico issues an order approv-*
 18 *ing the Settlement Agreement.*

19 (B) *COMPLETION OF CERTAIN PORTIONS OF*
 20 *REGIONAL WATER SYSTEM.*—*Amounts made*
 21 *available under section 107(c)(1)(B) or from*
 22 *other authorized sources shall be available for ex-*
 23 *penditure or withdrawal only after those por-*
 24 *tions of the Regional Water System described in*
 25 *section 1.5.24 of the Settlement Agreement have*

1 *been declared substantially complete by the Sec-*
 2 *retary.*

3 (C) *FAILURE TO FULFILL CONDITIONS*
 4 *PRECEDENT.—If the conditions precedent in sec-*
 5 *tion 203 have not been fulfilled by September 15,*
 6 *2017, the United States shall be entitled to set off*
 7 *any funds expended or withdrawn from the*
 8 *amounts appropriated pursuant to section*
 9 *107(c), together with any interest accrued,*
 10 *against any claims asserted by the Pueblos*
 11 *against the United States relating to the water*
 12 *rights in the Pojoaque Basin.*

13 **SEC. 106. ENVIRONMENTAL COMPLIANCE.**

14 (a) *IN GENERAL.—In carrying out this title, the Sec-*
 15 *retary shall comply with each law of the Federal Govern-*
 16 *ment relating to the protection of the environment, includ-*
 17 *ing—*

18 (1) *the National Environmental Policy Act of*
 19 *1969 (42 U.S.C. 4321 et seq.); and*

20 (2) *the Endangered Species Act of 1973 (16*
 21 *U.S.C. 1531 et seq.).*

22 (b) *NATIONAL ENVIRONMENTAL POLICY ACT.—Noth-*
 23 *ing in this Act affects the outcome of any analysis con-*
 24 *ducted by the Secretary or any other Federal official under*

1 *the National Environmental Policy Act of 1969 (42 U.S.C.*
 2 *4321 et seq.).*

3 **SEC. 107. AUTHORIZATION OF APPROPRIATIONS.**

4 *(a) REGIONAL WATER SYSTEM.—*

5 *(1) IN GENERAL.—Subject to paragraph (4),*
 6 *there is authorized to be appropriated to the Sec-*
 7 *retary for the planning, design, and construction of*
 8 *the Regional Water System and the conduct of envi-*
 9 *ronmental compliance activities under section 106 an*
 10 *amount not to exceed \$106,400,000, as adjusted under*
 11 *paragraph (3), for the period of fiscal years 2010*
 12 *through 2022, to remain available until expended.*

13 *(2) PRIORITY OF FUNDING.—Of the amounts au-*
 14 *thorized under paragraph (1), the Secretary shall give*
 15 *priority to funding—*

16 *(A) the construction of the San Ildefonso*
 17 *portion of the Regional Water System, consisting*
 18 *of—*

19 *(i) the surface water diversion, treat-*
 20 *ment, and transmission facilities at San*
 21 *Ildefonso Pueblo; and*

22 *(ii) the San Ildefonso Pueblo portion of*
 23 *the Pueblo Water Facilities; and*

1 (B) *that part of the Regional Water System*
2 *providing 475 acre-feet to Pojoaque Pueblo pur-*
3 *suant to section 2.2 of the Settlement Agreement.*

4 (3) *ADJUSTMENT.—The amount authorized*
5 *under paragraph (1) shall be adjusted annually to ac-*
6 *count for increases in construction costs since October*
7 *1, 2006, as determined using applicable engineering*
8 *cost indices.*

9 (4) *LIMITATIONS.—*

10 (A) *IN GENERAL.—No amounts shall be*
11 *made available under paragraph (1) for the con-*
12 *struction of the Regional Water System until the*
13 *date on which the United States District Court*
14 *for the District of New Mexico issues an order*
15 *approving the Settlement Agreement.*

16 (B) *RECORD OF DECISION.—No amounts*
17 *made available under paragraph (1) shall be ex-*
18 *pende unless the record of decision issued by the*
19 *Secretary after completion of an environmental*
20 *impact statement provides for a preferred alter-*
21 *native that is in substantial compliance with the*
22 *proposed Regional Water System, as defined in*
23 *the Engineering Report.*

1 (b) *ACQUISITION OF WATER RIGHTS.*—*There is au-*
 2 *thorized to be appropriated to the Secretary funds for the*
 3 *acquisition of the water rights under section 103(a)(1)(B)—*

4 (1) *in the amount of \$5,400,000.00 if such acqui-*
 5 *sition is completed by December 31, 2010; and*

6 (2) *the amount authorized under paragraph*
 7 *(b)(1) shall be adjusted according to the CPI Urban*
 8 *Index commencing January 1, 2011.*

9 (c) *AAMODT SETTLEMENT PUEBLOS' FUND.*—

10 (1) *IN GENERAL.*—*There is authorized to be ap-*
 11 *propriated to the Fund the following amounts for the*
 12 *period of fiscal years 2010 through 2022:*

13 (A) *\$15,000,000, which shall be allocated to*
 14 *the Pueblos, in accordance with section 2.7.1 of*
 15 *the Settlement Agreement, for the rehabilitation,*
 16 *improvement, operation, maintenance, and re-*
 17 *placement of the agricultural delivery facilities,*
 18 *waste water systems, and other water-related in-*
 19 *frastructure of the applicable Pueblo. The*
 20 *amount authorized herein shall be adjusted ac-*
 21 *cording to the CPI Urban Index commencing Oc-*
 22 *tober 1, 2006.*

23 (B) *\$37,500,000, which shall be allocated to*
 24 *an account, to be established not later than Jan-*
 25 *uary 1, 2016, to assist the Pueblos in paying the*

Pueblos' share of the cost of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System.

(C) \$5,000,000 and any interest thereon, which shall be allocated to the Pueblo of Nambe for the acquisition of the Nambe reserved water rights in accordance with section 103(a)(1)(A). The amount authorized herein shall be adjusted according to the CPI Urban Index commencing January 1, 2011. The funds provided under this section may be used by the Pueblo of Nambe only for the acquisition of land, other real property interests, or economic development.

(2) OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—Prior to conveyance of the Regional Water System pursuant to section 101, the Secretary is authorized to and shall pay any operation, maintenance or replacement costs associated with the Pueblo Water Facilities or the Regional Water System up to an amount that does not exceed \$5,000,000, which is authorized to be appropriated to the Secretary.

(B) OBLIGATION OF FEDERAL GOVERNMENT AFTER COMPLETION.—The amount authorized

1 *under subparagraph (A) shall expire after the*
 2 *date on which construction of the Regional*
 3 *Water System is completed and the amounts re-*
 4 *quired to be deposited in the account have been*
 5 *deposited under this section by the Federal Gov-*
 6 *ernment.*

7 ***TITLE II—POJOAQUE BASIN IN-***
 8 ***DIAN WATER RIGHTS SETTLE-***
 9 ***MENT***

10 ***SEC. 201. SETTLEMENT AGREEMENT AND CONTRACT AP-***
 11 ***PROVAL.***

12 *(a) APPROVAL.—To the extent the Settlement Agree-*
 13 *ment and the Cost-Sharing and System Integration Agree-*
 14 *ment do not conflict with this Act, the Settlement Agreement*
 15 *and the Cost-Sharing and System Integration Agreement*
 16 *(including any amendments to the Settlement Agreement*
 17 *and the Cost-Sharing and System Integration Agreement*
 18 *that are executed to make the Settlement Agreement or the*
 19 *Cost-Sharing and System Integration Agreement consistent*
 20 *with this Act) are authorized, ratified, and confirmed.*

21 *(b) EXECUTION.—To the extent the Settlement Agree-*
 22 *ment and the Cost-Sharing and System Integration Agree-*
 23 *ment do not conflict with this Act, the Secretary shall exe-*
 24 *cute the Settlement Agreement and the Cost-Sharing and*
 25 *System Integration Agreement (including any amendments*

1 *that are necessary to make the Settlement Agreement or the*
2 *Cost-Sharing and System Integration Agreement consistent*
3 *with this Act).*

4 *(c) AUTHORITIES OF THE PUEBLOS.—*

5 *(1) IN GENERAL.—Each of the Pueblos may*
6 *enter into contracts to lease or exchange water rights*
7 *or to forbear undertaking new or expanded water uses*
8 *for water rights recognized in section 2.1 of the Settle-*
9 *ment Agreement for use within the Pojoaque Basin in*
10 *accordance with the other limitations of section 2.1.5*
11 *of the Settlement Agreement provided that section*
12 *2.1.5 is amended accordingly.*

13 *(2) EXECUTION.—The Secretary shall not execute*
14 *the Settlement Agreement until such amendment is*
15 *accomplished under paragraph (1).*

16 *(3) APPROVAL BY SECRETARY.—Consistent with*
17 *the Settlement Agreement as amended under para-*
18 *graph (1), the Secretary shall approve or disapprove*
19 *a lease entered into under paragraph (1).*

20 *(4) PROHIBITION ON PERMANENT ALIENATION.—*
21 *No lease or contract under paragraph (1) shall be for*
22 *a term exceeding 99 years, nor shall any such lease*
23 *or contract provide for permanent alienation of any*
24 *portion of the water rights made available to the*
25 *Pueblos under the Settlement Agreement.*

1 (5) *APPLICABLE LAW.*—Section 2116 of the Re-
2 vised Statutes (25 U.S.C. 177) shall not apply to any
3 lease or contract entered into under paragraph (1).

4 (6) *LEASING OR MARKETING OF WATER SUP-*
5 *PLY.*—The water supply provided on behalf of the
6 Pueblos pursuant to section 103(a)(1) may only be
7 leased or marketed by any of the Pueblos pursuant to
8 the intergovernmental agreements described in section
9 104(c)(2).

10 (d) *AMENDMENTS TO CONTRACTS.*—The Secretary
11 shall amend the contracts relating to the Nambe Falls Dam
12 and Reservoir that are necessary to use water supplied from
13 the Nambe Falls Dam and Reservoir in accordance with
14 the Settlement Agreement.

15 **SEC. 202. ENVIRONMENTAL COMPLIANCE.**

16 (a) *EFFECT OF EXECUTION OF SETTLEMENT AGREE-*
17 *MENT.*—The execution of the Settlement Agreement under
18 section 201(b) shall not constitute a major Federal action
19 under the National Environmental Policy Act of 1969 (42
20 U.S.C. 4321 et seq.).

21 (b) *COMPLIANCE WITH ENVIRONMENTAL LAWS.*—In
22 carrying out this Act, the Secretary shall comply with each
23 law of the Federal Government relating to the protection
24 of the environment, including—

1 (1) *the National Environmental Policy Act of*
2 *1969 (42 U.S.C. 4321 et seq.); and*

3 (2) *the Endangered Species Act of 1973 (16*
4 *U.S.C. 1531 et seq.).*

5 **SEC. 203. CONDITIONS PRECEDENT AND ENFORCEMENT**

6 **DATE.**

7 (a) *CONDITIONS PRECEDENT.—*

8 (1) *IN GENERAL.—Upon the fulfillment of the*
9 *conditions precedent described in paragraph (2), the*
10 *Secretary shall publish in the Federal Register by*
11 *September 15, 2017, a statement of finding that the*
12 *conditions have been fulfilled.*

13 (2) *REQUIREMENTS.—The conditions precedent*
14 *referred to in paragraph (1) are the conditions that—*

15 (A) *to the extent that the Settlement Agree-*
16 *ment conflicts with this title, the Settlement*
17 *Agreement has been revised to conform with this*
18 *title;*

19 (B) *the Settlement Agreement, so revised,*
20 *including waivers and releases pursuant to sec-*
21 *tion 204, has been executed by the appropriate*
22 *parties and the Secretary;*

23 (C) *Congress has fully appropriated, or the*
24 *Secretary has provided from other authorized*
25 *sources, all funds authorized by section 107, with*

1 the exception of subsection (a)(1) of that section,
2 by December 15, 2016;

3 (D) the Secretary has acquired and entered
4 into appropriate contracts for the water rights
5 described in section 103(a);

6 (E) for purposes of section 103(a), permits
7 have been issued by the New Mexico State Engi-
8 neer to the Regional Water Authority to change
9 the points of diversion to the mainstem of the
10 Rio Grande for the diversion and consumptive
11 use of at least 2,381 acre-feet by the Pueblos as
12 part of the water supply for the Regional Water
13 System, subject to the conditions that—

14 (i) the permits shall be free of any con-
15 dition that materially adversely affects the
16 ability of the Pueblos or the Regional Water
17 Authority to divert or use the Pueblo water
18 supply described in section 103(a), includ-
19 ing water rights acquired in addition to
20 those described in section 103(a), in accord-
21 ance with section 103(g); and

22 (ii) the Settlement Agreement shall es-
23 tablish the means to address any permit
24 conditions to ensure the ability of the Pueb-
25 los to fully divert and consume at least

1 2,381 acre-feet as part of the water supply
2 for the Regional Water System, including
3 defining the conditions that will not con-
4 stitute a material adverse affect;

5 (F) the State has enacted any necessary leg-
6 islation and provided any funding that may be
7 required under the Settlement Agreement;

8 (G) a partial final decree that sets forth the
9 water rights and other rights to water to which
10 the Pueblos are entitled under the Settlement
11 Agreement and this title and that substantially
12 conforms to the Settlement Agreement has been
13 approved by the United States District Court for
14 the District of New Mexico; and

15 (H) a final decree that sets forth the water
16 rights for all parties to the Aamodt Case and
17 that substantially conforms to the Settlement
18 Agreement has been approved by the United
19 States District Court for the District of New
20 Mexico by June 15, 2017.

21 (b) *EXPIRATION DATE.*—If all the conditions precedent
22 described in subsection (a)(2) have not been fulfilled by Sep-
23 tember 15, 2017—

1 (1) *the Settlement Agreement and this Act in-*
 2 *cluding waivers described in those documents shall no*
 3 *longer be effective; and*

4 (2) *any funds that have been appropriated under*
 5 *this Act but not expended shall immediately revert to*
 6 *the general fund of the United States Treasury.*

7 (c) *ENFORCEMENT DATE.—The Settlement Agreement*
 8 *shall become enforceable as of the date that the United*
 9 *States District Court for the District of New Mexico enters*
 10 *a partial final decree pursuant to subsection (a)(2)(E) and*
 11 *an Interim Administrative Order consistent with the Settle-*
 12 *ment Agreement.*

13 (d) *EFFECTIVENESS OF WAIVERS.—The waivers and*
 14 *releases executed pursuant to section 204 shall become effec-*
 15 *tive as of the date that the Secretary publishes the notice*
 16 *required by subsection (a)(1).*

17 (e) *REQUIREMENTS FOR DETERMINATION OF SUB-*
 18 *STANTIAL COMPLETION OF THE REGIONAL WATER SYS-*
 19 *TEM.—*

20 (1) *CRITERIA FOR SUBSTANTIAL COMPLETION OF*
 21 *REGIONAL WATER SYSTEM.—Subject to the provisions*
 22 *in section 101(d) concerning the extent, size, and ca-*
 23 *capacity of the County Distribution System, the Re-*
 24 *gional Water System shall be determined to be sub-*

stantially completed if the infrastructure has been constructed capable of—

(A) diverting, treating, transmitting, and distributing a supply of 2,500 acre-feet of water to the Pueblos; and

(B) diverting, treating, and transmitting the quantity of water specified in the Engineering Report to the County Distribution System.

(2) CONSULTATION.—On or after June 30, 2021, at the request of 1 or more of the Pueblos, the Secretary shall consult with the Pueblos and confer with the County and the State on whether the criteria in paragraph (1) for substantial completion of the Regional Water System have been met or will be met by June 30, 2024.

(3) WRITTEN DETERMINATION BY SECRETARY.—Not earlier than June 30, 2021, at the request of 1 or more of the Pueblos and after the consultation required by paragraph (2), the Secretary shall—

(A) determine whether the Regional Water System has been substantially completed based on the criteria described in paragraph (1); and

(B) submit a written notice of the determination under subparagraph (A) to—

(i) the Pueblos;

1 (ii) the County; and

2 (iii) the State.

3 (4) *RIGHT TO REVIEW.*—

4 (A) *IN GENERAL.*—A determination by the
5 Secretary under paragraph (3)(A) shall be con-
6 sidered to be a final agency action subject to ju-
7 dicial review by the Decree Court under sections
8 701 through 706 of title 5, United States Code.

9 (B) *FAILURE TO MAKE TIMELY DETERMINA-*
10 *TION.*—

11 (i) *IN GENERAL.*—If a Pueblo requests
12 a written determination under paragraph
13 (3) and the Secretary fails to make such a
14 written determination by the date described
15 in clause (ii), there shall be a rebuttable
16 presumption that the failure constitutes
17 agency action unlawfully withheld or un-
18 reasonably delayed under section 706 of
19 title 5, United States Code.

20 (ii) *DATE.*—The date referred to in
21 clause (i) is the date that is the later of—

22 (I) the date that is 180 days after
23 the date of receipt by the Secretary of
24 the request by the Pueblo; and

25 (II) June 30, 2023.

1 (C) *EFFECT OF ACT.*—*Nothing in this Act*
 2 *gives any Pueblo or Settlement Party the right*
 3 *to judicial review of a determination of the Sec-*
 4 *retary regarding whether the Regional Water*
 5 *System has been substantially completed except*
 6 *under subchapter II of chapter 5, and chapter 7,*
 7 *of title 5, United States Code (commonly known*
 8 *as the “Administrative Procedure Act”).*

9 (5) *RIGHT TO VOID FINAL DECREE.*—

10 (A) *IN GENERAL.*—*Not later than June 30,*
 11 *2024, on a determination by the Secretary, after*
 12 *consultation with the Pueblos, that the Regional*
 13 *Water System is not substantially complete, 1 or*
 14 *more of the Pueblos, or the United States acting*
 15 *on behalf of a Pueblo, shall have the right to no-*
 16 *tify the Decree Court of the determination.*

17 (B) *EFFECT.*—*The Final Decree shall have*
 18 *no force or effect on a finding by the Decree*
 19 *Court that a Pueblo, or the United States acting*
 20 *on behalf of a Pueblo, has submitted proper noti-*
 21 *fication under subparagraph (A).*

22 (f) *VOIDING OF WAIVERS.*—*If the Final Decree is void*
 23 *under subsection (e)(5)—*

24 (1) *the Settlement Agreement shall no longer be*
 25 *effective;*

1 (2) *the waivers and releases executed pursuant to*
 2 *section 204 shall no longer be effective; and*

3 (3) *any unexpended Federal funds, together with*
 4 *any interest earned on those funds, and title to any*
 5 *property acquired or constructed with expended Fed-*
 6 *eral funds shall be returned to the Federal Govern-*
 7 *ment, unless otherwise agreed to by the Pueblos and*
 8 *the United States and approved by Congress.*

9 **SEC. 204. WAIVERS AND RELEASES.**

10 (a) *CLAIMS BY THE PUEBLOS AND THE UNITED*
 11 *STATES.—In return for recognition of the Pueblos' water*
 12 *rights and other benefits, including waivers and releases by*
 13 *non-Pueblo parties, as set forth in the Settlement Agreement*
 14 *and this Act, the Pueblos, on behalf of themselves and their*
 15 *members, and the United States acting in its capacity as*
 16 *trustee for the Pueblos are authorized to execute a waiver*
 17 *and release of—*

18 (1) *all claims for water rights in the Pojoaque*
 19 *Basin that the Pueblos, or the United States acting*
 20 *in its capacity as trustee for the Pueblos, asserted, or*
 21 *could have asserted, in any proceeding, including the*
 22 *Aamodt Case, up to and including the waiver effec-*
 23 *tiveness date identified in section 203(d), except to the*
 24 *extent that such rights are recognized in the Settle-*
 25 *ment Agreement or this Act;*

1 (2) *all claims for water rights for lands in the*
2 *Pojoaque Basin and for rights to use water in the*
3 *Pojoaque Basin that the Pueblos, or the United States*
4 *acting in its capacity as trustee for the Pueblos,*
5 *might be able to otherwise assert in any proceeding*
6 *not initiated on or before the date of enactment of this*
7 *title, except to the extent that such rights are recog-*
8 *nized in the Settlement Agreement or this Act;*

9 (3) *all claims for damages, losses or injuries to*
10 *water rights or claims of interference with, diversion*
11 *or taking of water (including claims for injury to*
12 *land resulting from such damages, losses, injuries, in-*
13 *terference with, diversion, or taking) for land within*
14 *the Pojoaque Basin that accrued at any time up to*
15 *and including the waiver effectiveness date identified*
16 *in section 203(d);*

17 (4) *their defenses in the Aamodt Case to the*
18 *claims previously asserted therein by other parties to*
19 *the Settlement Agreement;*

20 (5) *all pending and future inter se challenges to*
21 *the quantification and priority of water rights of*
22 *non-Pueblo wells in the Pojoaque Basin, except as*
23 *provided by section 2.8 of the Settlement Agreement;*

24 (6) *all pending and future inter se challenges*
25 *against other parties to the Settlement Agreement;*

1 (7) *all claims for damages, losses, or injuries to*
 2 *water rights or claims of interference with, diversion*
 3 *or taking of water (including claims for injury to*
 4 *land resulting from such damages, losses, injuries, in-*
 5 *terference with, diversion, or taking of water) attrib-*
 6 *utable to City of Santa Fe pumping of groundwater*
 7 *that has effects on the ground and surface water sup-*
 8 *plies of the Pojoaque Basin, provided that this waiver*
 9 *shall not be effective by the Pueblo of Tesuque unless*
 10 *there is a water resources agreement executed between*
 11 *the Pueblo of Tesuque and the City of Santa Fe; and*

12 (8) *all claims for damages, losses, or injuries to*
 13 *water rights or claims of interference with, diversion*
 14 *or taking of water (including claims for injury to*
 15 *land resulting from such damages, losses, injuries, in-*
 16 *terference with, diversion, or taking of water) attrib-*
 17 *utable to County of Santa Fe pumping of ground-*
 18 *water that has effects on the ground and surface water*
 19 *supplies of the Pojoaque Basin.*

20 (b) *CLAIMS BY THE PUEBLOS AGAINST THE UNITED*
 21 *STATES.—The Pueblos, on behalf of themselves and their*
 22 *members, are authorized to execute a waiver and release*
 23 *of—*

24 (1) *all claims against the United States, its*
 25 *agencies, or employees, relating to claims for water*

1 *rights in or water of the Pojoaque Basin or for rights*
2 *to use water in the Pojoaque Basin that the United*
3 *States acting in its capacity as trustee for the Pueblos*
4 *asserted, or could have asserted, in any proceeding,*
5 *including the Aamodt Case;*

6 (2) *all claims against the United States, its*
7 *agencies, or employees relating to damages, losses, or*
8 *injuries to water, water rights, land, or natural re-*
9 *sources due to loss of water or water rights (including*
10 *damages, losses or injuries to hunting, fishing, gath-*
11 *ering or cultural rights due to loss of water or water*
12 *rights; claims relating to interference with, diversion*
13 *or taking of water or water rights; or claims relating*
14 *to failure to protect, acquire, replace, or develop*
15 *water, water rights or water infrastructure) within*
16 *the Pojoaque Basin that first accrued at any time up*
17 *to and including the waiver effectiveness date identi-*
18 *fied in section 203(d);*

19 (3) *all claims against the United States, its*
20 *agencies, or employees for an accounting of funds ap-*
21 *propriated by Acts, including the Act of December 22,*
22 *1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat.*
23 *1562), the Act of March 26, 1930 (46 Stat. 90), the*
24 *Act of February 14, 1931 (46 Stat. 1115), the Act of*
25 *March 4, 1931 (46 Stat. 1552), the Act of July 1,*

1 1932 (47 Stat. 525), the Act of June 22, 1936 (49
 2 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564),
 3 and the Act of May 9, 1938 (52 Stat. 291), as author-
 4 ized by the Pueblo Lands Act of June 7, 1924 (43
 5 Stat. 636), and the Pueblo Lands Act of May 31,
 6 1933 (48 Stat. 108), and for breach of Trust relating
 7 to funds for water replacement appropriated by said
 8 Acts that first accrued before the date of enactment of
 9 this Act;

10 (4) all claims against the United States, its
 11 agencies, or employees relating to the pending litiga-
 12 tion of claims relating to the Pueblos' water rights in
 13 the Aamodt Case; and

14 (5) all claims against the United States, its
 15 agencies, or employees relating to the negotiation,
 16 Execution or the adoption of the Settlement Agree-
 17 ment, exhibits thereto, the Partial Final Decree, the
 18 Final Decree, or this Act.

19 (c) *RESERVATION OF RIGHTS AND RETENTION OF*
 20 CLAIMS.—Notwithstanding the waivers and releases author-
 21 ized in this Act, the Pueblos on behalf of themselves and
 22 their members and the United States acting in its capacity
 23 as trustee for the Pueblos retain.—

24 (1) all claims for enforcement of the Settlement
 25 Agreement, the Cost-Sharing and System Integration

1 *Agreement, the Final Decree, including the Partial*
2 *Final Decree, the San Juan-Chama Project contract*
3 *between the Pueblos and the United States or this Act;*

4 *(2) all rights to use and protect water rights ac-*
5 *quired after the date of enactment of this Act;*

6 *(3) all rights to use and protect water rights ac-*
7 *quired pursuant to state law to the extent not incon-*
8 *sistent with the Partial Final Decree, Final Decree,*
9 *and the Settlement Agreement;*

10 *(4) all claims against persons other than Parties*
11 *to the Settlement Agreement for damages, losses or in-*
12 *juries to water rights or claims of interference with,*
13 *diversion or taking of water (including claims for in-*
14 *jury to lands resulting from such damages, losses, in-*
15 *juries, interference with, diversion, or taking of*
16 *water) within the Pojoaque Basin arising out of ac-*
17 *tivities occurring outside the Pojoaque Basin;*

18 *(5) all claims relating to activities affecting the*
19 *quality of water including any claims the Pueblos*
20 *may have under the Comprehensive Environmental*
21 *Response, Compensation, and Liability Act of 1980*
22 *(42 U.S.C. 9601 et seq.) (including claims for dam-*
23 *ages to natural resources), the Safe Drinking Water*
24 *Act (42 U.S.C. 300f et seq.), the Federal Water Pollu-*

1 *tion Control Act (33 U.S.C. 1251 et seq.), and the reg-*
2 *ulations implementing those laws;*

3 *(6) all claims against the United States relating*
4 *to damages, losses, or injuries to land or natural re-*
5 *sources not due to loss of water or water rights (in-*
6 *cluding hunting, fishing, gathering or cultural*
7 *rights);*

8 *(7) all claims for water rights from water sources*
9 *outside the Pojoaque Basin for land outside the*
10 *Pojoaque Basin owned by a Pueblo or held by the*
11 *United States for the benefit of any of the Pueblos;*
12 *and*

13 *(8) all rights, remedies, privileges, immunities,*
14 *powers and claims not specifically waived and re-*
15 *leased pursuant to this Act or the Settlement Agree-*
16 *ment.*

17 *(d) EFFECT OF SECTION.—Nothing in the Settlement*
18 *Agreement or this Act—*

19 *(1) affects the ability of the United States acting*
20 *in its sovereign capacity to take actions authorized by*
21 *law, including any laws relating to health, safety, or*
22 *the environment, including the Comprehensive Envi-*
23 *ronmental Response, Compensation, and Liability*
24 *Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drink-*
25 *ing Water Act (42 U.S.C. 300f et seq.), the Federal*

1 *Water Pollution Control Act (33 U.S.C. 1251 et seq.),*
 2 *the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),*
 3 *and the regulations implementing those laws;*

4 *(2) affects the ability of the United States to take*
 5 *actions acting in its capacity as trustee for any other*
 6 *Indian tribe or allottee; or*

7 *(3) confers jurisdiction on any State court to—*

8 *(A) interpret Federal law regarding health,*
 9 *safety, or the environment or determine the du-*
 10 *ties of the United States or other parties pursu-*
 11 *ant to such Federal law; or*

12 *(B) conduct judicial review of Federal agen-*
 13 *cy action;*

14 *(e) TOLLING OF CLAIMS.—*

15 *(1) IN GENERAL.—Each applicable period of*
 16 *limitation and time-based equitable defense relating*
 17 *to a claim described in this section shall be tolled for*
 18 *the period beginning on the date of enactment of this*
 19 *Act and ending on June 30, 2021.*

20 *(2) EFFECT OF SUBPARAGRAPH.—Nothing in*
 21 *this subsection revives any claim or tolls any period*
 22 *of limitation or time-based equitable defense that ex-*
 23 *pired before the date of enactment of this Act.*

24 *(3) LIMITATION.—Nothing in this section pre-*
 25 *cludes the tolling of any period of limitations or any*

1 *time-based equitable defense under any other applica-*
2 *ble law.*

3 ***SEC. 205. EFFECT.***

4 *Nothing in this Act or the Settlement Agreement affects*
5 *the land and water rights, claims, or entitlements to water*
6 *of any Indian tribe, pueblo, or community other than the*
7 *Pueblos.*

Union Calendar No. 227

11TH CONGRESS
2^D Session

H. R. 3342

[Report No. 111-390]

A BILL

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

JANUARY 12, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed